Remarks

Claims 1-38 are pending. Claims 6, 9, 12-14, 25-26 and 36-38 are amended to more particularly point out and distinctly claim Applicant's invention. Claims 1-8 are deemed withdrawn in accordance with Applicants' election.

The Examiner rejected Claim 12 under 35 U.S.C. § 112, second paragraph, as being indefinite. As amended, the Examiner's objection to Claim 12 is believed overcome.

The Examiner rejected Claims 9-24 and 27-38 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,324,522 ("Peterson"). The Examiner states:

> Peterson discloses the claimed invention including receiving a request for a real-time price quote for a transaction (purchasing an item); the request occurring within a billing cycle (billing cycles are inherent in commercial enterprises); determining a total (the sum of all goods, products or services purchased); determining a billing service (postal mail, internet, etc. inherent in commercial operations, the bill has to get to the customer somehow); the first attribute being price per unit with available volume discounts); apportioning the price to the transaction (the seller has to pay his supplier based upon the number of units in turn received).

Applicant traverses the Examiner's rejection. As quoted above, the Examiner based his rejection on his interpretation of the term "billing service" as a service by which the bill is delivered to the customer. As explained below, the Examiner's interpretation of "billing service" is not a reasonable interpretation of that term. As amended, independent Claims 9 and 26 recite:

> 9.   (Currently amended) A method for real-time pricing comprising:
>
> receiving a request for a real-time price quote for a transaction related to a customer, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first

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production service instances, each first production service instance representing a first production service;

determining a total count of production service instances consumed during the billing cycle up to the first instance in time based on a pricing relationship;

determining a billable service appropriate for the first production service;

calculating a price for the first production service from a price table based on a first attribute for the billable service and the total count of production service instances consumed; and

apportioning the price to the received transaction based on the number of first production service instances in the transaction.

26.   (Currently amended) A computer-readable storage medium having stored thereon computer instructions that, when executed by a computer, cause the computer to:

receive a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each instance representing a first production service;

determine a total count of production service instances consumed during the billing cycle up to the first instance in time based on a pricing relationship;

determine a billable service appropriate for the first production service;

calculate a price for the first production service from a price table based on a first attribute for the billable service and the total count of production service instances consumed; and

apportion the price to the received transaction based on the number of first production service instances in the transaction.

(emphasis added)

The Examiner's interpretation of the term "billing service" is not a reasonable interpretation, since the term "billing service" was not used in the sense of "a service by which the bill is delivered to the customer" in Applicant's Specification and claims. For

example, on page 34, lines 22-30, "billing services" and "billable services" are used interchangeably to refer to "services related to activities having a cost or price, enabling the FSC to determine the cost of providing the financial transaction and the fees or prices the FSC is going to derive, earn or charge the consumer." To avoid the Examiner's confusion, Applicant has amended the claims to replace the term "billing service" by "billable service," which cannot be reasonably interpreted to refer to a service by which the bill is delivered to the customer. Furthermore, the Examiner interpretation of the term "billing service" is unreasonable since both Claims 9 and 26 recite calculating "a price for the first production service from a price table based on a first attribute for the billable service." This limitation in Claims 9 and 26 makes little sense under the Examiner's interpretation. Accordingly, Applicant submits that Claims 9 and 26, and their respective dependent Claims 10-25 and 27-38 are each allowable over Peterson. Reconsideration and allowance of Claims 9-38 are therefore requested.
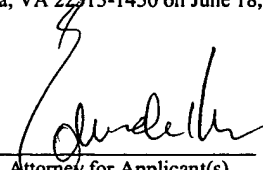
The Examiner rejected Claims 9-24 and 27-38 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,598,029 ("Johnson"). The Examiner provided no guidance to support his reading of any of Applicant's Claims 9-24 and 27-38 on Johnson. Johnson relates to an auction service that stimulates competition between energy suppliers (see, e.g., Johnson's Abstract and Figure 4). As Johnson neither discloses nor suggests any of "production service," "billable service," or "price table," as recited in each of Claims 9-24 and 26-38, Applicant respectfully submits that each of Claims 9-25 and 26-38 are allowable over Johnson. Reconsideration and allowance of Claims 9-38 are therefore requested.

At paragraph 12 of the Office Action, the Examiner required Applicant "to expressly indicate the claim limitation at issue and to show where in the specification or prosecution history the limitation is defined." The Examiner seems to be requiring that Applicant identify

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each claim term in the 38 claims which is used in the specification or the specification history in a manner inconsistent with their ordinary and customary meaning. Applicant respectfully traverses the Examiner's requirement. As the number of claim terms in the 38 claims is large, and as there is no definitive source of "ordinary and customary meanings" that is recognized and relied on by those skilled in the art, Applicant respectfully submits that such a blanket requirement is unreasonable. Further, Applicant believes that it is entitled to disclaim the broadest reasonable interpretation of a claim term, so as to adopt a narrowing meaning consistent with its use in the specification and file history, if and when it appears that such broadest reasonable interpretation would encompass prior art. Therefore, without reference to any prior art, a requirement for Applicant to define a claim term *a priori* and in the abstract is unreasonable, as such definition may materially affect the scope of a claim to which Applicant is entitled.
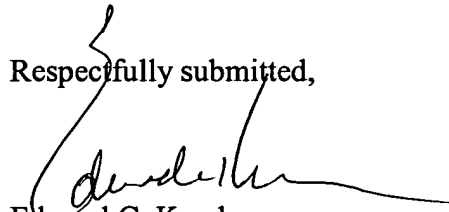
For the reasons stated above, Applicant believes that all pending claims (i.e., active Claims 9-38 and withdrawn Claims 1-8) are allowable. If the Examiner has any questions regarding the above, the Examiner is requested to telephone the undersigned at (408) 392-9250.

Respectfully submitted,

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